

Office of Chief Counsel
Internal Revenue Service

memorandum

CC: [REDACTED]: [REDACTED]: [REDACTED]: TL-N-5533-00
[REDACTED]

date:

to: Chief, Examination Division, [REDACTED] District
Attention: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED], Group Manager, Employment Tax
[REDACTED], Employment Tax Specialist
[REDACTED]

from: [REDACTED], Associate Area Counsel, LMSB
[REDACTED], Attorney
[REDACTED], Attorney

subject: Request for Pre-Review of Non-docketed Significant Advice

Taxpayers: (1) [REDACTED] (EIN: [REDACTED])
(2) [REDACTED] (EIN: [REDACTED])
[REDACTED], and
(3) [REDACTED] (EIN: [REDACTED])

Issue: Forms SS-10 and 4016 for tax years [REDACTED] through [REDACTED]
Statute of Limitations: [REDACTED]

THIS ADVICE CONSTITUTES RETURN INFORMATION SUBJECT TO I.R.C. § 6103. THIS ADVICE CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO ATTORNEY-CLIENT AND DELIBERATIVE PROCESS PRIVILEGES AND IF PREPARED IN CONTEMPLATION OF LITIGATION, SUBJECT TO THE ATTORNEY WORK PRODUCT PRIVILEGE. ACCORDINGLY, THE EXAMINATION OR APPEALS RECIPIENT OF THIS DOCUMENT MAY PROVIDE IT ONLY TO THOSE PERSONS WHOSE OFFICIAL TAX ADMINISTRATION DUTIES WITH RESPECT TO THIS CASE REQUIRE SUCH DISCLOSURE. IN NO EVENT MAY THIS DOCUMENT BE PROVIDED TO EXAMINATION, APPEALS, OR OTHER PERSONS BEYOND THOSE SPECIFICALLY INDICATED IN THIS STATEMENT. THIS ADVICE MAY NOT BE DISCLOSED TO TAXPAYERS OR THEIR REPRESENTATIVES.

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This advice responds to your request for advice on how to secure Forms SS-10 from three dissolved subsidiaries of [REDACTED].

ISSUES

For each of the following dissolved California corporations, who may execute a Form SS-10, Consent to Extend the Time to Assess Employment Taxes, for tax years [REDACTED] through [REDACTED]:

1. [REDACTED] (" [REDACTED] ");
2. [REDACTED] (" [REDACTED] ");
3. [REDACTED] (" [REDACTED] ").

CONCLUSION AND RECOMMENDATION

Each of the three dissolved corporations continues to exist for the purpose of winding up business affairs and so each may enter into a valid consent extending the time to assess employment taxes. Thus:

1. A Form SS-10 should be prepared for [REDACTED]. This form should be captioned as "[REDACTED] (EIN: [REDACTED])" and should be signed by a director or officer of [REDACTED].
2. A Form SS-10 should be prepared for [REDACTED]. This form should be captioned as "[REDACTED] (EIN: [REDACTED])" and should be signed by a director or officer of [REDACTED].
3. A Form SS-10 should be prepared for [REDACTED]. This form should be captioned as "[REDACTED] (EIN: [REDACTED])" and should be signed by a director or officer of [REDACTED].

Further, the Service need not obtain transferee consent forms for the employment tax liabilities of these entities at this time because we are satisfied that, under state law, the transferees would be liable for the transferor's tax liabilities.

FACTS

[REDACTED] was a California corporation wholly owned by [REDACTED]

[REDACTED] (" [REDACTED] ").¹

On [REDACTED], [REDACTED] filed a Certificate of Dissolution with the California Secretary of State. Paragraph 4 of the Certificate of Dissolution stated that all of [REDACTED]'s present and future tax liabilities had been assumed by [REDACTED].

[REDACTED]

[REDACTED] was a California corporation wholly owned by [REDACTED] [REDACTED] (" [REDACTED] "), also a California corporation. On [REDACTED], [REDACTED], acting as the sole shareholder of [REDACTED], executed a consent to dissolve [REDACTED] and adopted the following corporate resolutions:

RESOLVED FURTHER, that the directors and officers of Corporation are authorized and directed to take all appropriate measures to wind up and dissolve Corporation, including, without limitation, the payment of all its debts and liabilities, if any, and providing notice to the applicable state agencies in which Corporation holds a license to conduct business as a third party administrator or as a utilization review agent;

RESOLVED FURTHER, that, after paying or adequately providing for all its known debts and liabilities and complying with the provisions of Section 2005 of the California Corporations Code, all corporate assets remaining on hand, if any, shall be distributed to [REDACTED], as the sole shareholder of Corporation;

RESOLVED FURTHER, that, upon commencement of proceedings to wind up Corporation, Corporation's officers are further authorized and directed to make, execute, and deliver or file such other document, instruments, certificates, applications, or payment, in the name of or on behalf of Corporation, as the officers, in their discretion, may deem necessary, advisable, or appropriate to effect the full and final dissolution of Corporation

¹ During the years at issue, [REDACTED] was a wholly owned subsidiary of [REDACTED] (" [REDACTED] "). In [REDACTED], [REDACTED] purportedly merged into an Indiana Corporation named [REDACTED] (" [REDACTED] "), which in turn became a wholly-owned subsidiary of [REDACTED].

and the winding up of its affairs

On [REDACTED], [REDACTED] filed a Certificate of Dissolution with the California Secretary of States. Paragraph 4 of that Certificate of Dissolution provided that [REDACTED] had assumed all of [REDACTED]'s present and future tax liabilities.²

[REDACTED]

[REDACTED] was a California corporation wholly owned by [REDACTED]. On [REDACTED], [REDACTED], acting as the sole shareholder of [REDACTED], executed a written consent to dissolve [REDACTED] and adopted the following corporate resolutions:

RESOLVED FURTHER, that the directors and officers of Corporation are authorized and directed to take all appropriate measures to wind up and dissolve Corporation;

RESOLVED FURTHER, that upon commencement of proceedings to wind up Corporation, Corporation's officers are further authorized and directed to make, execute, and deliver or file such other documents, instruments, certificates, applications, or payment, in the name of or on behalf of Corporation, as the officers, in their discretion, may deem necessary, advisable, or appropriate to effect the full and final dissolution of Corporation and the winding up of its affairs

On [REDACTED], [REDACTED] filed a Certificate of Dissolution with the California Secretary of State. Paragraph 4 of that Certificate of Dissolution states that [REDACTED] had assumed all of [REDACTED]'s present and future tax liabilities.

DISCUSSION

Generally

The authority of a person to execute an agreement to extend the statute of limitations on behalf of a dissolved corporation is determined under the law of the state of incorporation. United

² [REDACTED] was a wholly owned subsidiary of [REDACTED] prior to [REDACTED]'s dissolution. When [REDACTED] later merged into [REDACTED], [REDACTED] became a wholly owned subsidiary of [REDACTED]. As mentioned in footnote 1, [REDACTED] is now the parent company of [REDACTED].

States v. Krueger, 121 F.2d 842, 845 (3rd Cir. 1941), cert. denied, 314 U.S. 677 (1942); McPherson v. Commissioner, 54 F.2d 751 (9th Cir. 1932).

The Service has specifically ruled that where state law continues the existence of a dissolved corporation for purposes of winding up its affairs, any officer or director authorized to act for the dissolved corporation may execute a consent to extend the time for assessment of tax during the period the corporation continues in existence under state law. Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified by Rev. Rul. 84-165, 1984-2 C.B. 305.

[REDACTED], [REDACTED], and [REDACTED]

Under the California law, a corporation that has dissolved may nevertheless carry out acts necessary to wind up its affairs, including those relating to taxes. See Cal. Corp. Code § 2010(a) (West Supp. 2000), Callan v. Commissioner, 476 F.2d 509 (9th Cir. 1973); affg. per curiam 54 T.C. 1514 (1970). California Corporations Code § 2001 (West 2000) provides in pertinent part:

The powers and duties of the directors * * * and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

* * * *

(b) To continue the conduct of the business insofar as necessary for the disposal or winding up thereof.

(c) To carry out contracts and collect, pay, compromise and settle debts and claims for or against the corporation.

* * * *

(h) In general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling and liquidating the affairs of the corporation.

There is not a specific period during which a dissolved California corporation must wind up its affairs. Since

settlement of a corporation's tax liabilities is an integral part of the winding up process, [REDACTED], [REDACTED], and [REDACTED] may each have a Form SS-10 executed on its own behalf to extend the time on assessment of employment tax. Further, each Form SS-10 should be executed by a director or officer of the entity identified therein.

Transferee Consent - Form 4016

I.R.C. § 6901 establishes a procedure by which the Service may assess and collect from a transferee of property the unpaid taxes of the transferor.

I.R.C. § 6901 is strictly procedural. Substantive liability can arise based on a contractual obligation. Thus, a party may be held liable for the tax liabilities of a third party if that party legally assumes the tax liability of the third party.

Transferee liability can also be established by the state law. Commissioner v. Stern, 357 U.S. 39(1958), affg. 242 F.2d 322 (6th Cir. 1957). In this regard, California Corporate Code Section 2011 provides that claims against a dissolved corporation may be enforced against its shareholders, if any of the assets of the dissolved corporation have been distributed to the shareholders. See Cal. Corp. Code § 2011(a)(1)(B) (West 2000).

According to the Certificates of Dissolution [REDACTED], [REDACTED], and [REDACTED] filed, these entities' tax liabilities were assumed by [REDACTED]. Further, assets of each of the entities were distributed to their respective corporate shareholder upon dissolution. The Service, thus, should be able to hold either [REDACTED] and/or the respective corporate shareholder of each entity as transferees under the state law without having to secure transferee consents.

If you have any questions, please contact [REDACTED] at [REDACTED] or [REDACTED] at [REDACTED].